

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL.,)	
)	
PLAINTIFFS,)	
)	DOCKET NO. 1:17-CV-2989-AT
-VS-)	
)	
BRAD RAFFENSPERGER, ET AL.,)	
)	
DEFENDANTS.)	

TRANSCRIPT OF TELEPHONE CONFERENCE PROCEEDINGS

BEFORE THE HONORABLE AMY TOTENBERG

UNITED STATES DISTRICT JUDGE

JULY 11, 2019

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

A P P E A R A N C E S:

ON BEHALF OF THE PLAINTIFFS: DONNA CURLING, DONNA PRICE, JEFFREY SCHOENBERG:

DAVID D. CROSS
CATHERINE CHAPPLE
MORRISON & FOERSTER, LLP

HALSEY G. KNAPP
ADAM SPARKS
KREVOLIN & HORST, LLC (VIA TELEPHONE)

ALSO PRESENT: DR. ALEX HALDERMAN (VIA TELEPHONE)

FOR THE PLAINTIFF COALITION FOR GOOD GOVERNANCE:

BRUCE BROWN
BRUCE P. BROWN LAW (VIA TELEPHONE)

DAVID R. BRODY
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW (VIA
TELEPHONE)

ALSO PRESENT: MARILYN MARKS (VIA TELEPHONE)

FOR THE DEFENDANTS STATE OF GEORGIA:

VINCENT ROBERT RUSSO, JR.
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BRYAN P. TYSON
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ALSO PRESENT: CAREY MILLER (VIA TELEPHONE)

FOR THE DEFENDANTS FULTON COUNTY:

KAYE WOODARD BURNWELL
CHERYL RINGER
OFFICE OF THE FULTON COUNTY ATTORNEY (VIA TELEPHONE)

ALSO PRESENT: MICHAEL BARNES, RYAN GERMANY, MERRITT BEAVER (VIA
TELEPHONE)

1 (JULY 11, 2019)

2 (PROCEEDINGS HELD IN CHAMBERS AT 1:19 P.M.)

3 THE COURT: All right. I would like plaintiffs' counsel
4 to explain to me why you need this at this juncture. I mean, I
5 don't know that it's moot, but I don't know why you need it.
6 There are still obviously issues and concerns that the defendants
7 have about production of this, so I think you've got to explain it
8 better to me because I can't -- I don't know quite the difference
9 between the database that you're saying that you need now and what
10 the experts and you have been given and given the right-to-use
11 tools that the state originally wasn't agreeing to have the
12 experts use.

13 MR. BROWN: Your Honor, this is Bruce Brown. If I may
14 answer that.

15 THE COURT: Go ahead.

16 MR. BROWN: What the plaintiffs are seeking in the
17 extraction and production of what we call the Phase 1 document is
18 the voluminous data that is in -- is contained in the actually 330
19 or so GEMS databases that will be produced. As the experts
20 themselves had stated in their own declarations, the review and
21 analysis of that information, which includes candidates' names,
22 the races, the voter groups and the various different constraints
23 that are used in the database to construct the ballots, the review
24 of that, although some of it can be automated, is extremely
25 time -- would take a lot of time, labor intensive. And it also

1 does not involve the same skill set.

2 This is an analysis of reams and reams of paper
3 cross-referencing that information to other information about the
4 elections that physically cannot --

5 THE COURT: Like what? I mean, that doesn't -- you've
6 described that before, I got that, but I'm -- and there's
7 something that you want to do with this and maybe you don't want
8 to be disclosing what it is but you have to if you even want to
9 have a chance of doing it at this point. I don't understand what
10 they're going to be doing. I don't understand why it's necessary.
11 And I don't understand why it doesn't -- I went to great lengths,
12 and you did too, to address some of the confidentiality issues,
13 even if you didn't agree with them, that the state had and has a
14 legitimate interest in, even if you disagree with it. So I really
15 don't understand suddenly why this doesn't run amuck of all that.

16 MR. BROWN: This is Bruce Brown again.

17 Your Honor, first is, of course, this information is not
18 confidential, although we have agreed in our most recent
19 submission to treat it as confidential. And so we have --
20 although we originally saw it and continue to believe that we're
21 entitled to simply the release of this data, that's not the
22 position we're taking right now.

23 The position we're taking right now is that the experts
24 should be permitted to extract this voluminous data and give it to
25 non-experts on a confidential basis subject to the terms of the

1 protective order so that there is two tiers of protection. One is
2 for the database itself and the source code and cryptographic keys
3 and the other things that only the experts would be entitled to
4 review. And then it's the output from the database that
5 non-experts would be entitled to review for -- to find where -- to
6 find the source of these mistakes that keep on cropping up and
7 whether it's in the relationships between the races, the ballots,
8 some feature of the ballot building or some flaw in that data that
9 it might be caught by the experts in an either automated review or
10 their review of other code that the non-experts would not have
11 access to, but we think that we also need to review the
12 non-confidential data itself. However, we're agreeing to treat
13 that as confidential and don't see, you know, that the state
14 should have a problem with that. And they may not.

15 THE COURT: Well, what are the -- we had this back and
16 forth this morning about even the accuracy of the field titles
17 that you were referencing and that you really -- you haven't
18 correctly identified --

19 MR. BROWN: Yes, your Honor.

20 THE COURT: -- the ones that you are wanting to keep
21 confidential or not or what you're referencing.

22 MR. BROWN: Yes, your Honor. This is Bruce Brown again.

23 We did the best we could having not seen the databases
24 yet to identify the different -- the 51 different categories, and
25 we obtained those categories from a 2002 Cobb County GEMS

1 database. So we're doing the best we can since the state parties
2 have not really responded to that listing or told us what the
3 correct list is.

4 And then I may -- I would like to call upon
5 Dr. Halderman to help us on how -- when he and Mr. Bernhard are
6 reviewing the GEMS databases he could or would propose to
7 translate the document categories that we have -- we have listed
8 on Exhibit B into --

9 (Interruption by the court reporter)

10 MR. BROWN: Parenthetically, Judge, we can't thank you
11 enough to take the time to hear this.

12 Dr. Halderman, maybe if you could tell us how once you
13 and Mr. Bernhard are reviewing the GEMS database you would take
14 the taxonomy of the various categories of information that's on
15 Exhibit B and translate that into how the state does it now.

16 DR. HALDERMAN: This is Alex Halderman, expert for the
17 plaintiffs.

18 So the taxonomy that we've included, as Mr. Brown has
19 indicated, is extracted from a Cobb County database, GEMS database
20 from 2002. It's -- the state has indicated that some of the table
21 names in their current database differ from the 2002 database
22 and -- so there's some amount of translation or further
23 investigation that would be necessary to identify any additional
24 tables that are non-confidential.

25 At this point I believe the position that the plaintiffs

1 want to take is that the tables that have already been disclosed
2 in the 2002 database are public -- the structure is publicly
3 known, and the state, I don't believe, has identified any of those
4 tables from 2002 as containing confidential structure.

5 THE COURT: They have maintained that it's -- and I
6 don't mean to make you into counsel, but they have maintained that
7 the entire arrangement of them is relational and somehow vital to
8 their security interest.

9 DR. HALDERMAN: Well, your Honor, I -- we've tried to
10 explain how the relationships to the tables that are present in
11 the 2002 database are just the obvious structure of how a
12 candidate relates to a name --

13 THE COURT: All right. I got that's your view. And I'm
14 not -- you know, I've taken days off of vacation to study and work
15 on this order and then to work on this part of it, so I'm telling
16 you I have read everything and I understand that. I'm just trying
17 to find out -- and I understand that you all have a different view
18 about it, but I am trying to understand from plaintiffs' counsel,
19 which has not been explained really still, is that you're hoping
20 to mine the status, I understand it, and extract something which I
21 don't know, which you do believe is confidential, but because you
22 have the wrong names I don't know what it really is that you're
23 trying to extract, that you're trying to say we'll agree that this
24 is confidential, and we're going to basically provide your clients
25 with a CD with all the other data in its current format. Is that

1 right? I'm not asking Dr. Halderman about this, I'm asking
2 counsel.

3 MR. BROWN: We're asking for the information to produce
4 and not -- yeah, in just a regular Microsoft -- blank Microsoft
5 Access database, just the lists and the tables of the information
6 that is -- that is public information, list of candidates, how it
7 links to the list of elections, et cetera, for each of the CDs.

8 DR. HALDERMAN: If I may clarify. This is
9 Dr. Halderman.

10 The databases that the state produces, as the state say,
11 do have differences from the databases that have been publicly
12 disclosed. And what we're saying is that the structure that has
13 been publicly disclosed, that information ought to be things that
14 we can extract because the structure is already known.

15 To the extent that there are other tables and structures
16 that aren't publicly known, I think that is a place where we may
17 have to have a further conversation about whether the data is
18 confidential or not based on what that structure is.

19 THE COURT: All right. So let me have the state's
20 counsel, or whoever you all identify, respond to simply why is it
21 that they can't make available what is tables that might appear --
22 as they have in Cobb County and other places that they've
23 obtained, the counties have obtained data from without anything
24 else, without any other accoutrements that might be in this -- of
25 information that may be in what's loaded in there.

1 MR. TYSON: Your Honor, this is Brian Tyson.

2 I think the key for this is what Dr. Halderman just
3 said, that the database -- our databases are different. So the
4 key to these databases is there's information in each table, and
5 Mr. Beaver or Mr. Barnes can speak to this in more detail if you
6 need it, that refers to other tables within the database. And
7 it's those relationships that the plaintiff has indicated are
8 necessary for their evaluation because they need to be able to see
9 the relational structure because that carries relevant
10 information. But given the fact that we don't have a one-to-one
11 list of what tables they're saying are public versus which ones we
12 have, that's the challenge in terms of how these databases relate
13 to each other.

14 I don't think we have enough information at this point
15 to say what information is public and if you strip the relational
16 information out, as the plaintiff has indicated, it becomes
17 useless to them in terms of their analysis.

18 THE COURT: Okay. Well, does either Mr. Barnes or
19 Mr. Beaver have anything more they can add about that?

20 MR. BEAVER: This is Merritt Beaver. I think what we're
21 trying to say is what the plaintiffs are saying is public would be
22 things that they can identify. We have said all along that the
23 Georgia database has unique elements which Mr. Halderman knows
24 that if you're writing malware, you need to know specifically
25 table names to make your malware work. As long as those are not

1 known, malware won't work on our database.

2 So if he says there are public-available tables, he
3 should generate that list of tables that he knows that -- then
4 we'll look at which ones those actually map to -- up to something
5 we have, but there's a lot of tables in the database that they
6 don't know about, which is what the whole secrecy is.

7 THE COURT: Okay. So, Dr. Halderman, can you do that?

8 DR. HALDERMAN: We have produced a list of tables that
9 we know about from the databases that are available publicly. And
10 those are --

11 THE COURT: That's in Exhibit B?

12 DR. HALDERMAN: That's right. To the extent those
13 tables are present in the database that the state has, those are
14 what we're proposing that we would like to -- we would like to be
15 able to extract or have the state extract. If there are other
16 tables, then that's a question that after we examine -- after
17 experts examine the database we propose to defer the question of
18 their confidentiality.

19 THE COURT: Mr. Beaver, have you looked -- I realize
20 that the numbers may be somewhat different but I don't know that
21 the titles of those tables are different, though I realize there's
22 a real passage of time obviously since 2002. The listing in
23 Exhibit B that counsel indicated there were some errors in the --
24 they're not called that any longer, something isn't called that
25 any longer, have you looked at that to determine whether those

1 are, in fact, available in a form that you are willing to produce?

2 MR. BEAVER: To start with, the whole table structure is
3 confidential. Now, comparing B to our table structure, only a
4 handful of tables are common. So out of 49, there's probably less
5 than 10.

6 THE COURT: Do you know what those are?

7 MR. BEAVER: No, I would have to go back through and
8 relook at them again. I don't have that with me. That was not
9 prepared for doing this level of analysis on the phone. But from
10 what I can tell whatever they have from 2002 was never an actual
11 GEMS database that was used in Georgia. I'm guessing it was some
12 training database that the original company used for educational
13 purposes but did not reflect what Georgia had.

14 THE COURT: Does plaintiffs' counsel or expert have any
15 response to that? Does plaintiffs' counsel or expert have any
16 response to that?

17 UNIDENTIFIED SPEAKER: Mr. Bernard, can you just
18 disclose where you got the database from.

19 MR. BERNHARD: Sure, it was made available to us by an
20 activist who acquired it through, I assume, a leak or something, I
21 don't know.

22 UNIDENTIFIED SPEAKER: But it's on the Internet, right?

23 MR. BERNHARD: That's correct, yeah.

24 THE COURT: It may be on the Internet, but I don't know
25 where it came from.

1 DR. HALDERMAN: Right. Well -- excuse me, this is
2 Dr. Halderman, your Honor. And it also does appear to be the 2002
3 ballot from Cobb County. So if this was something that was used
4 in testing or training, it was made specific to that election in
5 Georgia.

6 THE COURT: I'm not doubting that, but on the other hand
7 it is not like it was an -- and it may well be so but, you know, I
8 don't have it from a source that I can rely on exactly for the
9 purposes of this conversation either. I understand why you can
10 rely on it and it's informative but why is it -- I realize that
11 you want to spend -- this is a part the plaintiffs' analysis
12 strategy, but I would think that we would at least be in a less
13 theoretical territory if we had this conversation after the
14 plaintiffs' experts had actually looked at the database.

15 MR. BERNHARD: This is Matt Bernhard.

16 If I can just add, while we -- the provenance of this
17 particular Cobb County database is not well-known. It does match
18 very well with other GEMS databases that we have seen all over the
19 country that have been in use for decades.

20 THE COURT: And I'm not doubting that, I'm just saying
21 it's 2002, its provenance is likely under the circumstances but
22 things could have changed, and the state says they used also
23 different information on their own databases, the way they
24 construct it, and you're asking them to produce information from
25 their database. So I'm not doubting that it was Cobb County's but

1 there are all sorts of distinguishing circumstances too.

2 And I'm just wondering -- getting back to my question,
3 why wouldn't we be, even if I wouldn't be better off, discussing
4 this again after you've actually looked at the database, once you
5 get it?

6 MS. CHAPPLE: Your Honor, this is Catherine Chapple.

7 I think that part of this for us is that it's just a
8 matter of timing and resources. We have very little time before
9 the hearing before you on July 25th and we're talking about
10 hundreds of databases with millions of lines of data, so we really
11 need help with individuals familiar with this type of election
12 data to review it beyond just our cyber security expert. And
13 so --

14 THE COURT: Well, I understand that, you know, but I
15 would frankly feel more comfortable if I had -- if there was a --
16 somebody trained in security protocols, if you actually need some
17 expert assistance, if there's your own either individuals from --
18 who are paralegals in Morrison & Foerster or individuals who are
19 trained in this, who are at a high enough level to be trained in
20 security protocols from the University of Michigan to assist.

21 I understand why you want to use the people you want to
22 use, and I'm not critical of them in any way, but that would,
23 though, seem to me to address the state's concerns more. And even
24 though you dismiss them, I can't entirely dismiss them. And so I
25 don't -- it doesn't give me an assurance if you're just saying the

1 plaintiffs themselves are going to be looking at the data.

2 And I, you know, to some extent felt -- understood why
3 you thought Mr. Digges would be called to do that, and I have
4 that, but he still is a plaintiff in the case, I do understand
5 that. And there may be other ways that they can be identified as
6 helpful or there may be particular tables once the experts look at
7 this that they can say this is something that really seems like it
8 wouldn't expose relational data in this set of tables, or that
9 they are going to say we could use -- that you're just going to
10 end up having to use some of their own immediately trained staff
11 who have signed off on protocols and people at the law firm who
12 are actually operating under their supervision. But you're
13 telling me what you've proposed is that it's basically people who
14 are not going to be working under their supervision.

15 MR. BROWN: Your Honor, this is Bruce Brown. It's a
16 manpower --

17 THE COURT: I understand that. I understand that. And
18 if you want to put off the hearing, that's up to you.

19 MR. BROWN: We do not want to put off the hearing.

20 THE COURT: Okay. I mean --

21 MR. CROSS: Your Honor, this is David Cross. Could I
22 offer one suggestion?

23 THE COURT: Sure.

24 MR. CROSS: As I understand what they're proposing -- or
25 what the defendants are saying -- sorry, I'm in an airport,

1 hopefully it's not loud -- as I understand the concern, the
2 defendants' only confidentiality concern they've identified, other
3 than I think three specific fields, is the structure, which they
4 attribute to the relationships.

5 If we were to extract the data without the
6 relationships, just pull the data, swap files, get the blank
7 databases, would that obviate the issue at least at this phase and
8 we would deal with the relationship issue later as you've
9 suggested after we've seen the databases?

10 THE COURT: Well, I don't know what that would look
11 like, but I think it's certainly a more constructive proposal
12 relative to their concerns. Let me hear from Mr. Russo or
13 Mr. Beaver or both.

14 MR. TYSON: Your Honor, this is Bryan Tyson.

15 THE COURT: I'm sorry.

16 MR. TYSON: I think our conversation yesterday was
17 that -- or I can't remember which day, that without the relational
18 information that you couldn't really tell much from the database.
19 And I don't want to mischaracterize what Dr. Halderman said about
20 that, but my understanding from the plaintiffs was that they
21 needed the relational information to conduct this analysis.

22 So if there's a proposal in terms of what that would
23 look like, I think we could look at it, but my understanding was
24 that was not a reasonable accommodation for Dr. Halderman. I may
25 be incorrect about that.

1 MR. CROSS: This is David Cross. We're talking about
2 two different things, right? Dr. Halderman will have access to
3 the complete database, so will Mr. Bernhard, so will counsel.
4 What we're talking about is data to be reviewed by the
5 non-experts.

6 So to Mr. Tyson's point, this won't restrict what
7 Dr. Halderman could do, the relationships, he'll have that access.
8 What we're trying to get help with from non-experts is just the
9 sheer fact that you're talking millions of lines of data across
10 databases. In the ideal world we would have the relationship but
11 it will strain our ability to understand that data without the
12 relationships. Just as a compromise, to try to move this forward,
13 the idea was to just take that off the table since that's the only
14 data security issue they've identified is to say just -- we'll
15 just extract the data itself, no relationship, XY files and blank
16 Access databases; basically spreadsheets is what we're talking
17 about, the simple spreadsheets, we'll look at the data and do the
18 best we can with it.

19 If it turns out we do need those relationships or some
20 of them, as your Honor suggested, we'll come back to the
21 defendants, come back to the Court if we have to but then it's
22 less abstract, that would be the idea.

23 THE COURT: Do the defendants need to just go offline
24 for a few minutes to talk?

25 UNIDENTIFIED SPEAKER: Is Mr. Beaver still on the line,

1 I know he had to leave for a flight.

2 MR. BEAVER: This is Merritt Beaver.

3 Okay. So the plaintiffs know that the database is very
4 simple. It's like GEMS database. What's critical in security are
5 the table names. So even extracting spreadsheets, unless we
6 change all the table names, they will have the structure. That's
7 what the key is, is the table name. So they're trying to make it
8 sound like they're asking for a lot less when they're asking for
9 nothing different.

10 DR. HALDERMAN: This is Dr. Halderman.

11 If that's the main concern, we could change the table
12 names in what we extracted to generic descriptive names of the
13 data in the tables.

14 THE COURT: Would that address your concern, Mr. Beaver?

15 MR. BEAVER: No, they would have the names then. This
16 is Merritt Beaver. They would have the names. Once it's out,
17 it's out and it --

18 THE COURT: You would have to change the name to a
19 generic name?

20 MR. BEAVER: "He," once "he" has it, it's out. That has
21 been the whole security --

22 THE COURT: Well, he is -- I mean, Dr. Halderman will
23 have it but that's not the point, the point --

24 MR. TYSON: Your Honor. I'm sorry, this is Bryan Tyson.
25 I just wanted to clarify what Dr. Halderman was saying.

1 Dr. Halderman, were you saying that you would basically
2 extract the database information to its table, change the name of
3 the table, remove all the fields that include relationships with
4 other tables within the database so you're left with nothing but
5 just rows and rows of data that doesn't have any association to
6 another table and that's what would be the extracted product?

7 DR. HALDERMAN: This is Dr. Halderman.

8 I'm trying to find a way to address the specific
9 concerns. So, yes, what we could do is rename a table, for
10 instance, if the table is something like an actual name of a table
11 and there is V and -- R and V center or something like that, we
12 could change it to a description, so races and vote centers, for
13 instance, expanding on that. So it's addressing Mr. Beaver's
14 concern that the specific table name could somehow be used.

15 We could replace places where there are relational
16 identifiers with just whatever the data that relation is pointing
17 to is. So, for instance, if there's a relational identifier that
18 is pointing to a candidate in another table, we could replace it
19 with the name of the candidate. And I -- if this is necessary to
20 address state's concerns, we could also change the names of the
21 specific fields in place where -- in places where those fields
22 would otherwise be specific identifiers, so a field that was the
23 string V center, we could expand to vote center name, something
24 like that, that would allow an analyst to know what that
25 information is but wouldn't be the specific string representation

1 in the database that is, I believe, if I'm understanding
2 Mr. Beaver correctly, what he is concerned about being released.

3 MR. TYSON: Your Honor, Brian Tyson again.

4 It sounds like we're getting way down in the weeds
5 obviously. It seems like to me this is appropriate for
6 Dr. Halderman and the folks in DC to get the databases pursuant
7 to the protective order, do an analysis, maybe come back with a
8 proposal, here's what we propose to do, here's what it would look
9 like, and then we can look at that, because we're talking through
10 a lot of details in terms of the database structure, so I wanted
11 to make sure that -- I think it makes sense to get them to look at
12 it first and then bring it to us, maybe there's some other
13 proposal after looking at the database that makes more sense.

14 MS. CHAPPLE: This is Catherine Chapple.

15 That would be -- the problem is that there's just so
16 little time before the preliminary injunction hearing and we've
17 described what we would be doing and how we would protect the
18 information that the state says is confidential and we're -- and
19 we're not hearing why those proposals would not work. And to ask
20 for further briefing next week, putting us closer and closer to
21 the hearing, is just -- isn't going to be -- isn't usable or --
22 and is highly prejudicial to us at this point.

23 THE COURT: Well, I'll tell you, I'm going -- it's
24 Thursday afternoon and I understand you have a significant time
25 frame issue but you're going -- I don't know when the -- exactly

1 the delivery will occur but it will be Friday, and presumably in
2 compliance with the Court order by 2:00. And you can look at it
3 then and then -- I don't know. Mr. Beaver is apparently going off
4 somewhere, I don't know if he's going on vacation or what. Is he
5 going to be available late on Friday or on Saturday?

6 MR. BEAVER: This is Merritt. I'll be back on Sunday.

7 THE COURT: You'll be back on Sunday. And is that
8 Sunday -- I hate to ask you but is that Sunday evening or Sunday
9 during the day?

10 MR. BEAVER: Evening.

11 THE COURT: Okay. So, you know, you can all schedule
12 something -- you know, I would basically say schedule something
13 for early, very early on Monday morning, and if you can't agree on
14 something, then I'll hear from you. But I understand what the
15 plaintiffs are saying, and I understand that some of the -- I
16 think it's a creative solution that Mr. Cross and Dr. Halderman
17 now suggests. I don't know if it would really work. And I don't
18 want the state to simply say no, no, no, because that's sort of --
19 is not helpful either.

20 But one of the things that you -- it seems to me that
21 Dr. Halderman and you, Mr. Bernhard, could do is actually
22 basically create what you're saying you would -- do an excerpt
23 like you're suggesting you would give to the plaintiffs' counsel
24 and provide it to counsel to share with counsel and for them to
25 share with Mr. Beaver so that that's the subject of your

1 conversation at 9:00 in the morning on Monday.

2 MS. CHAPPLE: This is Catherine Chapple, your Honor.
3 Thank you.

4 Before we get off the phone, if we could address one
5 further issue and that's the issue of the protective order.
6 There's --

7 THE COURT: No, we can't discuss that yet, we have to
8 finish what we're doing right now.

9 MS. CHAPPLE: Sorry.

10 THE COURT: That's all right.

11 So I wanted to, first of all, find out that that's
12 doable for all counsel and the parties and the experts.

13 MR. TYSON: Yes, your Honor. This is Brian Tyson. I
14 think that suggestion works.

15 Can we get some clarity as far as the database delivery.
16 Are the environments as ordered by the Court ready and are the
17 staff who have executed the confidentiality agreement ready to
18 receive those databases tomorrow?

19 THE COURT: Can plaintiffs' counsel and Dr. Halderman
20 respond.

21 MS. CHAPPLE: This is Catherine Chapple.

22 Yes, we are putting the finishing touches on the secure
23 facility here in the Morrison & Foerster office in DC, and we will
24 send around the confidentiality agreement as well. The
25 confidentiality agreement should come around if not tonight by

1 tomorrow morning.

2 THE COURT: What about in Michigan?

3 DR. HALDERMAN: Excuse me, this is Dr. Halderman, your
4 Honor.

5 Yes, we expect to have everything ready by 2:00
6 tomorrow.

7 MR. TYSON: This is Bryan Tyson.

8 Could Dr. Halderman or someone circulate an address at
9 the University of Michigan where the delivery would need to take
10 place, we would appreciate that.

11 DR. HALDERMAN: Yes, we will.

12 THE COURT: And is the state intending to send a
13 representative or to send this by courier service?

14 MR. RUSSO: Your Honor, this is Vincent Russo.

15 We are -- we're working on coordinating that between
16 ourselves right now. We have a deposition in this case tomorrow
17 that is of a third party that the plaintiffs are taking and a
18 number of other responses to --

19 THE COURT: All right.

20 MR. RUSSO: -- discovery. So it will be personal
21 delivery, though, is what I'm expecting.

22 THE COURT: Obviously share that information with
23 plaintiffs' counsel so everyone is ready when we expect -- and
24 that they'll be there, who's arriving.

25 MR. RUSSO: Yes, ma'am. We don't have flights yet but

1 soon.

2 THE COURT: I just want y'all to confirm that you
3 will be available for a Monday 9:00 phone conference and for
4 Dr. Halderman to confirm that he can get the information to
5 counsel in time that counsel can distribute whatever you're
6 proposing.

7 DR. HALDERMAN: This is Dr. Halderman.

8 Yes, your Honor.

9 THE COURT: Okay. All right. All right.

10 What do you want to address now on the protective order?

11 MR. BROWN: Your Honor, this is Bruce Brown for both
12 sets of plaintiffs.

13 We had submitted that -- the joint dispute over the
14 productive order some time ago. Technically it's still pending.
15 Your Honor made a number of observations about the protective
16 order issues.

17 THE COURT: I thought I entered a text order that
18 basically said or -- and Ms. Cole can correct me if I'm wrong,
19 it's fine. I thought we entered something basically that said I
20 was going to defer all the disputes that you had as to making --
21 the plaintiffs said there would be no such thing as retroactive
22 confidentiality, and I'm just not dealing with that until I -- I'm
23 basically deferring all the confidentiality issues as to
24 publication of things until we come back in Atlanta and when I can
25 see -- the whole case has been rolling on and I can understand

1 some things more clearly about what the issues are than I did a
2 few weeks ago.

3 And I just don't see why you can't keep -- I thought
4 what we said was raise any objections you have and I'll deal with
5 them the week of the 20th.

6 MR. BROWN: As a practical matter, the defendants and
7 the third parties are not producing any documents, your Honor,
8 because they -- the position they're taking, not unreasonably, is
9 there not being a protective order entered, those documents, you
10 know, they don't know what to do, I guess. And if they -- we
11 will -- if they produce them as confidential, we will treat them
12 as confidential as if our proposed protective order were granted,
13 if that's sufficient.

14 THE COURT: Well, they don't think your protective order
15 is sufficient, that's why it's not going to work.

16 MR. BROWN: I have submitted a revised protective --
17 this is Bruce Brown still.

18 THE COURT: But it still has retroactive, doesn't it,
19 basically -- there are things that I know that they'll object to
20 likely.

21 MR. BROWN: Our -- well, the -- what needs to happen,
22 your Honor -- this is Bruce Brown again. What needs to happen is
23 that the new documents that have not been produced, we need to
24 get.

25 THE COURT: I understand that and we'll enter something

1 but there's no point in our entering something that basically
2 grants you broader access than the state's willing to agree and I
3 haven't ruled on it actually as a matter of substance.

4 MR. BROWN: If I may make this clarification, your
5 Honor, I'm not arguing with you on that, our proposed order,
6 just -- this is just for information. Our proposed order changes
7 the "attorneys' eyes only" designation so that it excludes parties
8 and party representatives. That was an observation that you made
9 several weeks ago in our last telephone conferencing. We made
10 that change. And it -- it does not -- it does not give the --
11 anybody the power to retroactively designate these confidential
12 documents, that's what that one is.

13 THE COURT: Has the state looked at it? I know it just
14 came in.

15 MR. RUSSO: This is Vincent Russo.

16 Your Honor, we have not looked at the newest proposal;
17 however, we did propose to plaintiffs that if counsel could agree
18 that documents that we would be marking confidential under the
19 proposed protective order would be treated as confidential under
20 that order and then -- until the order is entered and then from
21 there on be subject to the order, we don't mind producing those
22 right now, but we -- we did have -- we never got confirmation from
23 all their counsel on that. Mr. Cross confirmed it was okay with
24 them but we never got confirmation from Mr. Brown.

25 So we did not want to produce those confidential

1 documents until we knew that everybody agreed because we didn't
2 want to have this fight over what is public and what is not at
3 that point, what's not retroactive and what is retroactive after
4 the fact.

5 THE COURT: Do all plaintiffs' counsel agree with that?

6 MR. BROWN: Yes, we do, your Honor. This is Bruce
7 Brown. We agree to treat confidential whatever they produce as
8 confidential.

9 MR. RUSSO: Your Honor, that does segue nicely into
10 issues regarding document production we still have.

11 THE COURT: Let me finish this one so I can mechanically
12 effectuate this. Do you want us to simply -- do you want to look
13 at their draft order or do you want us to just simply enter a very
14 short protective order that simply summarizes that and says that
15 anyone can designate it but it will be limited to how it's limited
16 and that everyone is free to make the objection as they see fit by
17 next weekend?

18 MR. RUSSO: We would like to take a look at their new
19 proposed --

20 THE COURT: All right. Go ahead and look at it, but I
21 would like to enter it so that some version of it -- look at it
22 and then mark it up and indicate your objections and fix it the
23 way you are suggesting also and, if you would, then send it -- you
24 can send your comments and -- then put your comments on the record
25 and you can send the marked-up version to opposing counsel and

1 to -- I guess they filed their marked-up version, so go ahead and
2 file your marked-up version also. But we want to get this entered
3 so everyone knows by tomorrow morning that they're producing
4 documents.

5 MR. BROWN: Thank you, your Honor.

6 MR. RUSSO: Yes, ma'am. Thank you.

7 THE COURT: What did you have next? I cut you off.

8 MR. RUSSO: Yes, ma'am. The state defendants have two
9 outstanding issues, the first being -- also involving production
10 of documents. We've requested all of the materials that
11 Dr. Halderman relied on for, amongst other things, his
12 presentation that was done at the hearing last year. And we're at
13 an impasse regarding production of the memory card that was used
14 in that demonstration.

15 Plaintiffs are willing to allow us to go to Ann Arbor to
16 inspect it on Dr. Halderman's -- I guess his equipment; however,
17 similar to, you know, state's production of confidential
18 information to them, we think that they should be producing that
19 to us. And we'll agree to confidentiality agreements, just like
20 they're going to have to sign, but, you know, we think we should
21 be able to look at it in our own environment.

22 MR. CROSS: Your Honor, this is David Cross.

23 THE COURT: Yes.

24 MR. CROSS: The challenge we have with this is the
25 memory card contains the malware that Dr. Halderman uses to

1 manipulate the election results as your Honor saw in the
2 demonstration in the hearing last September. This is -- we're
3 talking worlds of sensitivity beyond anything to do with the GEMS
4 databases. There's a false equivalency to suggest they're
5 anywhere near the same. And we're just not comfortable giving
6 that type of software to anyone, including a state government.

7 Dr. Halderman has secured that in all the time that he's
8 had it. There's no reason they can't go to look at it -- they've
9 already agreed to go to Michigan to inspect other equipment, like
10 the DRE machines used in the demonstration. They're going to have
11 to go to Michigan regardless, there's no additional burden on
12 them. But it is just -- the risk of that getting out is just too
13 high, it's way too high.

14 THE COURT: Well, are you objecting to them bringing a
15 laptop themselves, a separate laptop, same sort of thing that --

16 MR. CROSS: David Cross again.

17 They have not proposed that. If there is equipment they
18 need to bring, we certainly can discuss that, and Dr. Halderman
19 can weigh in on that. As long as they're not taking a copy of the
20 malware with them, we have no problem with them using whatever
21 equipment they need to inspect it, to look at it, to understand
22 it, and Dr. Halderman can speak more to that specifically. But
23 the key is that that software cannot leave Dr. Halderman's
24 environment, it is just way too big of a risk.

25 MR. RUSSO: Your Honor, this is Vincent Russo.

1 The state defendants are not -- we're not going to Ann
2 Arbor to depose Dr. Halderman as of right now and we -- not before
3 the PI it does not appear but possibly. However, there's no -- we
4 don't have plans to go up and inspect the DRE that he did the
5 demonstration on. And, frankly, it's the memory card that really
6 is the main ingredient anyway.

7 THE COURT: Well, you know what, the way this has arisen
8 is just -- most recently is my seeing the state's response to
9 Mr. -- today that was filed, or late last night. I can't remember
10 which any longer, but late last night, whatever time it was
11 yesterday evening. I looked at it late last night, so I don't
12 know when you filed it.

13 But what I would suggest is that if -- there has to be a
14 way that they can really look at it and whether it's Friday or a
15 different day, at least I'm going to give Dr. Halderman the
16 same -- you know, go through the same process I tried to before
17 with the state, is that plaintiffs' counsel for Dr. Halderman
18 should actually provide a proposal for how they can actually
19 evaluate it because it is a basis of his opinion. And I have no
20 idea what's involved, and I haven't gotten any information about
21 that. And I hear the concerns about gross threats but that's
22 generally stated and I would have to have more.

23 But I think, you know, to start off with from a
24 problem-solving perspective, it seems to me that, Mr. Cross, you
25 and Dr. Halderman, or Ms. Chapple and Dr. Halderman, need to be

1 thinking about what you're going to propose, and then
2 Dr. Halderman would have to provide some sort of affidavit as to
3 why other alternatives are not -- why this is the best alternative
4 and why other alternatives are not a factor.

5 MR. BROWN: We can do that, your Honor, thank you.

6 THE COURT: I don't want to keep on dealing with this
7 obviously, but, you know, time is of an essence to the state too.
8 So, you know, I doubt we're going to have all that resolved by
9 Friday, and it might be that Mr. Beaver wants to go up with
10 somebody at a different day, but obviously time is of the essence.
11 So I would like you to have something that addresses that out to
12 the state by tomorrow.

13 Can you do that? I know you're trying to get the labs
14 done and everything else. Are you going to be able to do that by
15 noon tomorrow in terms of at least a proposal so you can talk
16 about it?

17 MR. BROWN: Yes, your Honor.

18 MR. CROSS: This is David Cross. Are you asking that
19 we file that with the Court or send that to the defendants?

20 THE COURT: I would prefer you be able to first talk,
21 obviously, so that you can talk and if you can't all resolve it,
22 you can file whatever you're going to file, but they would -- it
23 seems to me to have something in writing to them about what you're
24 proposing is important so they can review it and have something
25 concrete and they can go over with either Mr. Beaver or Mr. Barnes

1 or their designees tomorrow. And then if you can't resolve any of
2 it, you'll have to file something by Monday at noon.

3 MR. CROSS: Thank you, your Honor.

4 MR. RUSSO: Thank you, your Honor. And that goes into
5 our other issues with one of our own experts, Dr. Michael Shamos,
6 who has a declaration attached to plaintiffs' response to the
7 preliminary injunction motion that was filed yesterday. He's a
8 professor at Carnegie Mellon in computer science. He actually
9 has -- he's on vacation with his grandchildren the week of the
10 hearing, and we've been trying to figure out alternatives to allow
11 him to be able to testify.

12 We presume the Court would like to hear from him live,
13 and maybe you'll know more after you see his declaration, but
14 we've discussed potentially a video deposition. He could be
15 deposed on the 19th that we could do to preserve his testimony for
16 the hearing or possibly have him phone in to the -- to the hearing
17 on the 26th. Of course, he wouldn't be able to hear plaintiffs'
18 testimony --

19 THE COURT: Where will he be? This is a terrible
20 circumstance but where will he be?

21 MR. RUSSO: My understanding is he's out of the country.
22 Actually -- so apparently some trip he had planned with his
23 grandkids for some time. And we just retained him.

24 And the other offer we propose is he could come on
25 Monday after the weekend and testify live if that's what you would

1 like. We wanted to make sure that you were aware of the issue
2 and, you know, I wanted to put that on the table.

3 THE COURT: What do opposing counsel think?

4 MR. BROWN: We don't think you need to deal with this
5 right now. This is Bruce Brown. I think that the arrangements
6 for his deposition, whether it gets taken or whether or not he can
7 appear, may go into the weight that you give his affidavit, his
8 declaration, but that the arrangements I think is something that
9 we'll try to work out. And if one side or the other isn't
10 reasonable about making accommodation, then you can take that into
11 consideration in the weight that you give his declaration.

12 THE COURT: Well, why don't y'all keep on talking about
13 it and, you know, obviously if somebody's taking his deposition,
14 you have a right to do so, it would be better to have it on video.
15 It doesn't mean I wouldn't have questions, though, that's the only
16 issue. But why don't you try to figure that out because I know
17 the week afterwards I have a trial, a criminal trial, and I don't
18 know when anyway the expert is coming back or would be available
19 anyway, but it would be useful for me to know when that would be.

20 MR. RUSSO: Yes, ma'am. We can do -- one suggestion
21 would be a video deposition, although the deposition would be
22 prior to many additional supplemental declarations of plaintiffs'
23 experts and then -- if you have questions, then have him available
24 by phone for additional questions or video conference so that way
25 we can kind of cut down on some of the time. Also you would have

1 the video deposition that would be as direct and I guess -- at
2 cross and then we could address any further rebuttal and questions
3 you have on a video conferencing --

4 THE COURT: All right. I think y'all need to work on
5 this some more. I haven't looked at the affidavit. It's
6 difficult for me to assess at this juncture and it sounds like you
7 all haven't gone through the whole process. I always try to
8 accommodate everyone and obviously try to accommodate people who
9 have long-term vacation plans with their families, but it's
10 important too, so we have to figure out something that's going to
11 be viable. And, of course, I did consider experts in the last
12 preliminary -- their affidavits in the last injunction hearing who
13 didn't appear in front of me too and really studied them as well.

14 So I guess we'll have to talk about it next week after
15 you all spend some more time trying to hash that out.

16 MR. CROSS: Your Honor, this is David Cross. The only
17 point I want to make is that we oppose any extension for altering
18 the schedule of the hearing. The one fact that I think is
19 important here is that we've learned from the defendants that they
20 retained Dr. Shamos when they knew he would not be available for
21 the hearing. This isn't a situation that was rushed upon them.

22 And I agree, it's not something that has to get resolved
23 today. If we have to do this by deposition, we could probably
24 work that out. But I just wanted to make clear --

25 THE COURT: I heard that. I heard that.

1 MR. RUSSO: Vincent Russo.

2 I just point out there's only so many experts in this
3 field across the country.

4 THE COURT: And I understand that too. I understand
5 that. I live in the real world.

6 So we're going to get something back from you basically
7 ASAP so that Ms. Cole and I can get out an order on the protective
8 order, right?

9 MR. RUSSO: Yes, ma'am. This is Vincent Russo. I'm
10 going to do it right when we get off this call.

11 THE COURT: Thank you. It's 2:09. So you think you can
12 get it to us in an hour?

13 MR. RUSSO: Yes, ma'am.

14 THE COURT: And I think that when you're -- I mean, go
15 ahead and file it but e-mail it to Ms. Cole before you do anything
16 else simply so if you're having to get somebody else to do the
17 filing process for you, we get it as soon as possible.

18 MR. RUSSO: Yes, ma'am.

19 THE COURT: And, you know, as we're talking about the
20 issues about the card, obviously Dr. Halderman has his own
21 proprietary interest in that as well besides the security issue,
22 so I don't know how that factors in but obviously it probably is
23 one other factor that you need to all discuss when you're trying
24 to get this resolved. But I haven't been in, you know -- that
25 whole business about Dr. Halderman's card only has just arisen.

1 I'm just throwing it out to get you to deal with all issues at
2 once and we don't have this, you know, sputtering on and on and
3 on, okay.

4 All right. Well, hopefully we've moved forward a little
5 bit. Good luck and I know we'll be hearing from you all.

6 MR. RUSSO: Thank you for your time, Judge.

7 MR. BROWN: Thank you, your Honor.

8 MR. CROSS: Thank you, your Honor.

9 (PROCEEDINGS REPORTED WERE CONCLUDED AT 2:20 P.M.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true
and correct transcript of the proceedings taken down by me in the
case aforesaid.

This the 12th of July, 2019.

Penny Pritty Coudriet



PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER